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The Los Angeles BAR BULLETIN

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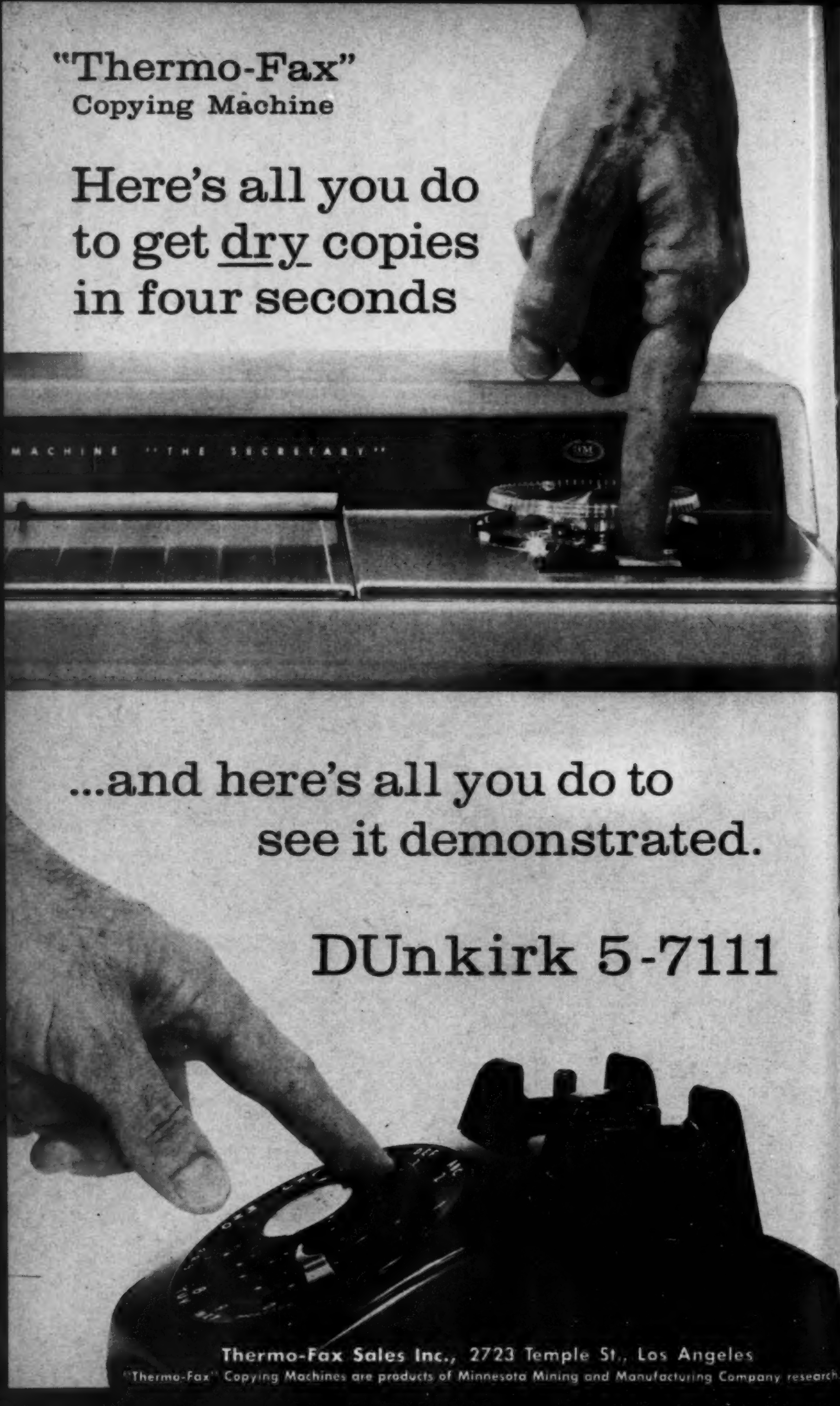
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The Los Angeles BAR BULLETIN

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THE PRESIDENT'S PAGE

☆ ☆ ☆ ☆ ☆ ☆ ☆ ☆ GRANT B. COOPER

Is there a fundamental, an irreconcilable conflict between the goals of fair trial for an accused person or a civil litigant, and of guaranteeing a free press and free speech?

Can these differences be resolved without unsupportable sacrifices by either the Bar or the press?

These problems were discussed with ideal objectivity and commendable lucidity at the June meeting of the Los Angeles County Bar Association by two worthy advocates, and reported briefly in last month's Bulletin. The speakers were Mr. Joseph A. Ball, former State Bar President, and Mr. Henry D. Osborne, city editor of the Los Angeles Mirror.

Mr. Osborne argued that the terms "fair trial" and "free press" are not mutually exclusive, and that it is fallacious to assume that you can have one but can not enjoy both. Even the Finch murder trial, which was highly publicized before and while it was in progress, did not hamper the administration of justice, despite excesses in journalistic zeal here and there, Mr. Osborne maintained.

He might have bolstered his argument that the pre-trial publicity did not tend to influence potential jurors against the defendants by pointing out that the jury became hopelessly deadlocked rather than united in support of the prosecution's theory of the case.

The speaker confessed that he doesn't think newspapers are as influential as some people have claimed, citing the fact that "if they were, every citizen would register and vote at every election, because newspapers are perpetually urging them to do so."

This situation is due for another airing during the American Bar Association meeting in Washington, D. C., in the near future. The occasion, which undoubtedly will be attended by some of our LACBA members, is a panel discussion on "Crime Portrayal in Public Media."

This will be a Criminal Law Section meeting on Tuesday, August 30, to be conducted by District Attorney William B. McKesson of Los Angeles County. The panelists will be Charles Fletcher-Cooke of London, a member of the British Parliament; Thad J. Brown, Jr., former Vice President and Counsel, National Association of Broadcasters, and Tom Cameron, Los Angeles Times reporter and specialist

in articles on the administration of justice.

In somewhat the same field, your President will appear in Washington on August 27 on another panel discussion, this one being on "Lawyers on Television Programs—a Problem in Ethics," under sponsorship of the National Conference of Bar Presidents. Past President Herman F. Selvin will share the discussion. (Our Association is one of the first to adopt a resolution urging the abstention by our members from appearing on commercial television "courtroom dramas.")

Our television fare, so far as "crime shows" and "courtroom dramas" are concerned, comes in for some biting comment in a survey and analysis prepared for the National Probation and Parole Association by Peter P. Lejins, Professor of Sociology at the University of Maryland. It is titled, "Crime, Violence and Horror Movies and TV Shows, and Juvenile Delinquency."

In view of the fact of our concern with the involvement of lawyers in television programs, it may be of interest to cite a report from the survey to the effect that in a study of several years ago 70 per cent of those interviewed felt that mystery and crime programs on television and radio contributed to juvenile delinquency. 24 per cent disagreed, while six per cent had no opinion.

It is as parents as well as attorneys that these situations concern us, while it is primarily in our professional capacities that the effects of pre-trial publicity in the newspapers and on television and radio upon fair trial are of moment. It will be interesting to observe whether what some deplore while others hail as a trend toward the English system of curbing pretrial publicity in our information media will fare in this period of general discussion and concern.

FRONT COVER

This month's cover is a picture taken in 1957 of California's first offshore oil drilling site, located in the Pacific Ocean, 8100 feet offshore from Seal Beach, adjacent to the Los Angeles-Orange County line. The structure is in 45 feet of water. Exclusive of its adjoining wharves, the filled land portion is 75 feet in diameter, and contains conductor pipes for 70 wells. It is owned in equal undivided interests by Monterey Oil Company and Texaco, Inc., and is operated by Monterey. In the distance is Belmont Shore and Signal Hill.

Black Gold and Blue Sky

By
Earl Hightower

» » EVER SINCE oil was first discovered by Col. Drake in 1856 at Titusville, Pennsylvania, the possibility of quick riches from "black gold" has lured the public investor to expend large sums of money in the exploration for oil and gas. Most of these expenditures have been through the purchase of stock in large oil companies who reinvest this capital and the earnings therefrom.

In recent years, however, a large part of the oil and gas exploration has been carried out by independent oil operators and small oil companies, part of the expenditures being contributed by the public investor through the purchase of stock, and part by the sophisticated public investor through the medium of direct investment in exchange for a portion of the working interest, royalty, net profits or oil payment interests.

In the early days of the oil business in California, promoters induced individuals to invest in oil and gas exploration, often times selling more than a 100% interest in the wells or projects which frequently resulted in transfers of fractional interests of one kind or another in oil and gas rights.

Notwithstanding the fact that most states as well as the federal government had adequate fraud laws, there developed a theory that the investor was not capable of protecting himself, that his own judgment could not determine what was "fair and reasonable," and therefore additional legal protection should be set up for his best interest, whereby an employee of the local, state or federal government had the power to determine whether or not the particular transaction was "fair and reasonable," such employee thus becoming an expert in the oil business, even though he may never have seen an oil and gas lease or personally engaged in the oil business.

At first it was thought that corporate securities laws were designed solely to cover oil transactions carried out through the medium of a corporation by the issuance of shares of stock. Since the speculative nature of the oil business makes it difficult to satisfy the Corporation Commissioner as to such things as the fair value of unproven oil and gas leases or other mineral rights to be transferred, it was reasoned that transactions between individuals and between corporations and individuals, outside the realm of what is considered to be ordinary corporate financing through sale of stocks or bonds, should also be covered by the umbrella of government protection.

Evolution of "Blue Sky" Laws in California

Although oil and gas transactions now occur on a national and international level, we are primarily concerned here with the "blue sky laws" in California which have evolved from the statutes of 1917, known as the

ABOUT THE AUTHOR

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"Corporate Securities Act," to what is now Division 1 of Title 4 of the Corporations Code, Section 25000 et seq., and is presently called the "Corporate Securities Law." The prohibitive sections of the "Corporate Securities Law"[1] contain definitions of the words "company," "security," "sale" or "sell," exempt certain sales defined therein, render void the issuance of any security without a permit, or any security issued in non-conformity with any provision in the permit,[2] and impose criminal sanctions for violations thereof.[3]

A reading of those sections makes it obvious that individuals are covered by the law, as well as corporations, associations and other groups, and it is equally apparent that aside from the partnership and joint venture interests exception and the promissory note exception under Section 25102 (c), the law applies to private transactions as well as to transactions with the public.[4]

From the above we see that the Corporate Securities Law extends not only to the securities issued by both domestic and foreign corporations, but also to those issued; by associations, joint stock companies, partnerships of every kind, trustees, and individuals.

Section 25008 of the Corporations Code defines an oil security as a "certificate of interest in an oil, gas or mining title or lease" and defines the term "security" in such a broad and all-inclusive manner that it is not very helpful without considerable interpretation. Such terms as stocks, bonds, and debentures present no problem; but does not a grant deed evidence beneficial interest in title to real property? Under usual circumstances it is not seriously contended that a permit is required before a grant deed, bill of sale, or an oil and gas lease can be delivered.

How a Permit is Secured

In California the sale or issuance of a security must be pursuant to a permit obtained in compliance with Section 25501 of the Corporations Code, the application for which must set forth information as provided in Section 25502,[5] and in addition thereto if the applicant is a corporation, the application must comply with Section 25504.[6] Section 25506 requires the Commissioner to examine each application filed, and if he deems it advisable, to make an examination and investigation of the affairs of the ap-

[1]Sections 25001, 25003, 25008, 25009, 25010 (1) and (m), 25152 and 25500, Corporations Code.

[2]Section 26100, Corporations Code.

[3]Sections 26103 and 26106, Corporations Code.

[4]*People v. Sidwell,* (1945) 27 C. 2d 121, 161 P. 2d 913; *Domestic and Foreign Petroleum Co., Ltd., v. Long,* (1935) 4 C. 2d 547.

[5]Section 25502, Corporations Code.

[6]Section 25504, Corporations Code.

[7]Section 25507, Corporations Code:
"If the Commisisoner finds that the proposed plan of business of the applicant and the proposed issuance of securities are fair, just and equitable, that applicant intends to transact its business

plicant, so that he may make the finding required by Section 25507.[7]

If we consider the intent of the law and the sections above set out, we see that before a permit is obtained it is up to the applicant to convince the Commissioner that the sale of its securities will not work a fraud upon the purchaser of said securities.

Procedure for Oil and Gas Permit

In filing an application for a permit to sell oil or gas securities, a detailed statement of the plan upon which the individual or company proposes to transact business is essential,[8] together with the fact that the applicant has the right to drill for and produce oil or gas from a given acreage, that the applicant has good title to the leasehold estate, which should be substantiated by a preliminary title report not more than six months old, or in states which do not furnish title reports, an attorney's opinion of title. In addition thereto, there should be attached to the application an engineering report by a competent and disinterested petroleum engineer, licensed in the state where the property is located, or in California, showing the probabilities of obtaining oil in commercial quantities and the geological facts supporting such belief. This report should contain the engineer's recommendations of where to locate the well, his estimate of the depth at which productions is expected, and a budget showing how much money should be spent, and for what purpose, to drill, test and complete the well to the point where oil can be marketed. These costs should include drilling, testing, completion, costs of roads, campsites, pipelines and other costs that must be paid for before oil can be successfully marketed.

With all of the above information before him, the Commissioner will consider all the facts, and if he finds the proposals to be fair, just and equitable, may make a finding and issue a permit with or without imposing certain conditions therein.[9]

The Commissioner may, and frequently does, set forth in the permit recitals of the pertinent facts about the applicant and the proposed operations that are to be financed by the permit and imposes conditions such as:

1. That a true copy of the permit be given to the prospective purchaser before he subscribes for the security.

2. That before the permit becomes effective, the correct title documents, deed, lease, assignment, etc. be filed and recorded with the proper governmental authority, so that title will be vested in the applicant or the royalty purchaser.

3. That the applicant appoint a depositary (bank or trust company) where the proceeds from the sale of the securities must be deposited until the sum needed to properly finance the business has been raised. When this amount has been secured, the Commissioner will cause the release thereof to the applicant, so that the business may proceed. The sum required to be impounded is usually the amount set forth in the budget which the applicant files with the application.

4. That promotional shares to compensate the promoters for their labor, time, money and resourcefulness in

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fairly and honestly, and the securities it proposes to issue and the method to be used by it in issuing or disposing of them are not such as, in his opinion, will work a fraud upon the purchaser thereof, the Commissioner shall issue to the applicant a permit authorizing it to issue and dispose of securities, as therein provided, in this State, in such amount and for such consideration and upon such terms and conditions as the Commissioner may provide in the permit. Otherwise, he shall deny the application and refuse the permit, and notify the applicant in writing of his decision."

[8]Section 25502 (d), Corporations Code.

planning the application and putting the deal together be escrowed, since the value of these shares is unproven and depends on further development of the enterprise started by the promoters. The number of these shares cannot exceed the number sold for cash or other tangible assets.

5. That the holders of these promotional shares waive their rights to participate in such distribution of assets until the other investors have received back in dividends or capital distribution an amount equal to their original investment.

6. That the promoters waive dividends on the promotion stock until the investors have received the return of a sum equal to their original investment, since an oil, gas or mining venture deals with a wasting and depreciating asset, and therefore the law allows dividends to be paid out of income rather than out of profits.

7. That instruments transferring title to securities be deposited in escrow with an escrow holder approved by the Commissioner.

8. That the permit will expire at a certain date, usually six months after it is issued.

When is a Permit Necessary

In almost every oil transaction the oil and gas attorney is faced with the question, "Is a permit required?" The real problem is that of determining which transaction results in the issuance of a security within the meaning of the act and which does not result in the issuance of a security. The courts in California have held that where grant deeds to small parcels of land were issued, with the representation that it was valuable for oil, and the purchaser was offered the opportunity of leasing the land purchased back to the seller, under a community lease, it was a security within the meaning of the Corporate Securities Law,[10] and that an assignment by itself was not a security, but when coupled with a sublease back, a permit became necessary;[11] that where mineral deeds were sold in units of 2½ and 1-acre parcels, pursuant to a previously executed agreement of sale which gave the seller the right to select the parcel, it was held to be a security within the meaning of the act.[12]

Passive Investor

In California the courts have taken the approach that the form of the conveyance may in one case be held to be a security and in another case not, depending upon whether the purchaser is handing over his money to someone in the expectation of receiving a profit from the conduct by others of an enterprise over which the purchaser has no real control and in the conduct of which he does not participate, except as a passive investor.[13]

In most of the above situations the purchaser is clearly in a position of a passive investor with no control over the conduct of the enterprise, and in most of the cases there was a decided element of promotional activity or purpose present.[14]

(Continued on Page 337)

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[9] Section 25508, Corporations Code.

[10] *People v. Yant,* (1938) 26 C.A. 2d 725.

[11] *El Claro Oil etc. Co. v. Daugherty,* (1936) 11 C.A. 2d 274.

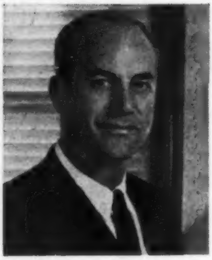
[12] *Moore v. Stella,* (1942) 52 C.A. 2d 766.

"In holding that the deeds to mineral rights issued by the defendant without a permit were invalid, we of course do not hold that every conveyance of a fractional interest in prospective oil land or of a segregated parcel thereof is a security or, more specifically, that it is a certificate of interest in an oil title."

[13] *Domestic and Foreign Petroleum Co. v. Long,* (1935) 4 C. 2d 547.

[14] *People v. Craven,* (1933) 219 C.522. *Ogier v. Pacific Oil & Gas, etc. Corp.,* (1955) 132 C.A. 2d 496. *People v. Chait,* (1945) 69 C.A. 2d 503. *McFaul v. Deck,* (1939) 30 C.A. 2d 424. *People v. McDaniels,* (1938) 25 C.A.2d 64. *People v. Jackson,* (1937) 24 C.A. 2d 182.

Financing Oil and Gas Transactions



By
RICHARD C. BERGEN
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» » IT IS GENERALLY recognized that the best way to finance oil and gas properties, whether wildcat or proven, is by the OPM Method—"Other People's Money." In the case of wildcat properties, it has been the practice for many years for a lessee who needs financing to assign his lease to some person or company and reserve some type of a right to participate, without charge, in any production that may be developed, and possibly getting a cash bonus in addition. This free ride can take the form of an overriding royalty,[1] a carried working interest,[2] a net profits interest,[3] a free well or wells,[4] or a combination of any of the foregoing. Once a lease has been proven, however, the lessee obviously will want and expect to keep it largely unto himself, and, of course, the traditional way to finance additional drilling on a proven lease is by a loan from a bank or an insurance company, secured by a deed of trust on the lease, a chattel mortgage on the equipment, and an assignment of the oil runs. However, the lessee in such a case must pay taxes on the oil income, even though such income is assigned to the lendor and goes to paying off the financing institution. It is, of course, difficult to pay off any indebtedness with after-tax dollars, and this has caused oil people to seek other methods of financing drilling operations in proven fields—namely, by using an oil payment.

An oil payment is, in effect, a limited overriding royalty, and usually takes the form of the lessee (hereinafter called "A") assigning to a purchasing company (hereinafter called "B") a certain percentage of all production from a lease, free of all costs, until B has received from the proceeds of such production a certain amount of money, plus interest, at a designated percent. Once there are enough wells drilled in a pool to demonstrate that there are sufficient proven reserves to assure the ultimate payment of the face amount of an oil payment, it is possible to raise money by selling an oil payment which can be hypothecated by the purchasing

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[1]An overriding royalty is an interest in gross production carved out of the lessee's interest, and normally is not subject to any charges except for its share of taxes and other items customarily assessed against a landowners royalty.

[2]A carried working interest is created when the lessee reserves a portion of the actual leasehold estate, but requires that the assignee "carry" him by paying all expenses for such portion with a right of reimbursement only out of production.

[3]A net profits interest is simply a right to share in whatever net profits are derived from production.

[4]A free well deal is invariably accompanied by a reservation of a portion of the actual leasehold estate, and the owner of such portion is not required to put up his share of the money for the free well or wells, but pays his share of all further costs and expenses.

BIOGRAPHICAL SKETCH OF RICHARD C. BERGEN

Received B.S. degree from Northwestern University in Evanston, Illinois, in 1935; LL.B. from Harvard Law School in 1938, where he was an editor of the Harvard Law Review; is presently a partner in the law firm of O'Melveny & Myers, specializing in oil and gas matters.

company to a bank or insurance company for its full face value. For instance, A could assign to B an oil payment on a proven lease, payable out of 70% of gross production, and to last until such time as B has derived therefrom the sum of $500,000, plus interest at 6½% on the unpaid balance. If the lease has sufficient proven reserves so that the oil payment could be expected to be paid out of production from the lease within approximately a four year period, it would be possible for B to immediately hypothecate this oil payment to a bank or an insurance company (hereinafter called "C"), in return for the entire $500,000, and thus procure all the funds necessary to pay off A. Assuming the bank's current interest rate for loans of this type was 6%, B could keep as his profit for his trouble the interest spread of the difference between the 6% he pays the bank and the 6½% return provided by the oil payment.

The effect of this transaction is that A has anticipated 70% of his income from the property over a four year period, and for tax purposes the proceeds received by A from the sale of such an oil payment is treated as ordinary income[5] to A at the time of its receipt, which income, however, is subject to depletion the same as it would have been depletable had A taken the oil income as and when produced over the four year period. For tax purposes, B has a cost basis of $500,000 for the oil payment, and since B can take cost depletion, his taxable income is confined to the one-half of 1% interest differential.

This extra income to A can prevent a possible loss of a portion of A's allowable percentage depletion with respect to production from the property for such year. Although a percentage depletion allowance is tentatively allowed an oil operator of 27½% of his gross income during a year from a particular property, this allowance cannot exceed 50% of the *net income* from the same property for such year. In other words, the government takes the view that in no event can percentage depletion with respect to a property during any year exceed one-half of the net income from the same property, and thus the government is going to tax one-half the net income irrespective of the application of the depletion allowance. Accordingly, if it appears at the end of a fiscal year that a property will have a gross income of $100,000 so that a percentage deple-

[5]See G.C.M. 24849, C.B. 1946-1, 66.

tion allowance of $27,500 would be theoretically allowable, a portion of the allowance will be lost if the net income from the property is not at least twice such theoretical allowance, or $55,000. If due to high drilling expenses or other reasons, it is contemplated that the property is going to net for the year only $15,000, there would be a loss of $12,500 of tax free income if nothing further was done. However, by selling an oil payment in the requisite amount prior to the end of the taxable year, it is possible for the lessee to increase his net income from the property to a point where 27½% of his gross income will be as great as one-half of his net income. Obviously, it is highly advantageous to sell such an oil payment in order to take full advantage of the tax free income permitted by the depletion allowance, and accordingly, it has become common practice in the industry to carve out and sell year end oil payments where necessary to prevent a loss of the maximum permissible depletion allowance.

If A pledges the monies derived from the sale of an oil payment on a lease to the development of the same lease, then rather than having immediate taxable income, as would be the case if there was no such pledge, A has no income tax at all to pay with respect to the sale of such an oil payment, and the money derived from the sale can be devoted to the development of the property without tax consequences.[6] In this situation, the proceeds from the sale is treated as trust funds not beneficially belonging to A and for this reason, is not included in A's income for tax purposes provided, of course, it is actually devoted to the development of the property. However, A will not have any cost basis for any equipment, casing or other material which is purchased with the proceeds of the oil payment, nor can he take a deduction for intangibles which are paid for with the proceeds from such a sale.[7]

A lessee may transfer an oil payment to a drilling contractor for a free well. In such event, the contractor does not realize income at that time even though the value of the oil payment exceeds his cost of drilling the well.[8] The lessee may not take any deductions for the cost of the well, but there is no taxable income to the lessee for the enhancement in the value of the property[9] or for the proceeds of production devoted to discharge the oil payment. The contractor may recover his drilling costs out of his oil

[6] See G.C.M. 22730, C.B. 1941-1, 214.

[7] See Transcalifornia Oil Co., Ltd. 37 B.T.A. 119.

[8] *Comm. v. Edwards Drilling Co.*, 95 F. (2d) 719 (C. C. A. 5, 1938); *Dearing v. Comm.*, 102 F. (2d) 91 (C. C. A. 5, 1939).

[9] *E. C. Laster v. Comm.*, 43 B.T.A. 159 (1940) acq. 1941-1 C.B. 7.

payment by taking the higher of cost or percentage depletion,[10] and the balance of the oil payment which is also depletable income to him represents his drilling profit and compensation for the risk taken. In a proven lease, the risk to the contractor may be small and accordingly, an advantageous deal for both parties may be made.

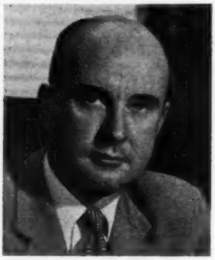
Although as discussed hereinabove, the oil payment is very useful in financing drilling operations, its highest and best use is in connection with the acquisition of producing oil and gas properties by the so-called A-B-C method. Under this procedure, A, the owner of the lease, can sell it to B, an operator, for a small cash consideration, but reserving a large interest bearing oil payment. A will immediately sell the oil payment to C, an investor, at its face value, and C will derive all the funds necessary to purchase the oil payment by hypothecating such payment to a financing institution. The interest rate in the oil payment will be fixed so that C can keep an interest spread of a fraction of a percent for his risk and trouble. A variation of this procedure is for A to sell the entire lease to C, the investor, who will then finance the purchase by selling the lease to B, an operator, for a small cash consideration, but reserving a large interest bearing oil payment which C will then hypothecate to a financing institution to raise the balance of the purchase price. The tax affect of these A-B-C deals is to permit B, the operator, to acquire the entire working interest for a small cash consideration, and the balance of the purchase price, as represented by the oil payment, is discharged with proceeds of production which is not subject to tax. If B had borrowed the money, he would have had to pay taxes on the income, and only the balance remaining after paying such taxes would have been available to pay off the financing institution. By using the A-B-C method, however, the full amount of the oil payment production can go to pay off the bank, and the only tax due thereon is with respect to the interest differential. A has sold his entire property, and if he is not a dealer and has held the lease for the applicable period, he gets long term capital gain on the proceeds. B has acquired the lease he wanted for little cash, and C, as the owner of the oil payment, takes cost depletion so that he pays no income tax on the proceeds from the oil payment except on his profit represented by the interest differential. Accordingly, the A-B-C method of purchasing oil properties has favorable tax consequences for everyone, and frequently makes a deal possible which otherwise would not be economically feasible.

The mechanics of carving out oil payments and implementing an A-B-C transaction must be correctly and carefully carried out, and there are pitfalls for the unwary which can destroy the expected advantages.[11] However, if properly done, the financing of oil and gas transactions can be accomplished on a much more favorable basis than is ordinarily possible in other types of business transactions.

[10] G.C.M. 22332, 1941-1 C.B. 228; *Comm. v. Rowan Drilling Co.*, 130 F. (2d) 62 (C. C. A. 5, 1942); *Hugh Hodge Drilling Co. v. Comm.*, 43 B.T.A. 1045 (1941); *R. T. Myers v. Comm.*, 11 T.C. 495 (1948).

[11] See G.C.M. 24849, 1946-1, C.B. 66; Oil and Gas Payment Pitfalls, 1 Oil and Gas Tax Quarterly No. 2, p. 30 (January, 1952).

Salvage Value and Useful Life for Depreciation of Business Assets



By MYRL R. SCOTT
Member of the firm of Sheppard, Mullin, Richter & Hampton and member of the Los Angeles County Bar Association Committee on Taxation

» » THE RUNNING BATTLE between taxpayers and the Commissioner of Internal Revenue over the method of computing depreciation and salvage value of depreciable assets used in a trade or business has terminated in favor of the Commissioner as a result of three recent Supreme Court decisions. See *Massey Motors, Inc. v. U.S.A.*, U.S. S.C. No. 141, June 27, 1960, 60-2 USTC para. 9554; *Commissioner v. Evans*, U.S.S.C. No. 143, June 27, 1960, 60-2 USTC para. 9554; and *The Hertz Corporation v. U.S.A.*, U.S.S.C. No. 283, June 27, 1960, 60-2 USTC para. 9555.

These decisions support the Commissioner's drive to prevent taxpayers from deriving substantial capital gains from the sale of their depreciable business property. The Supreme Court held that the "useful life" of such business assets is the estimated useful period over which the taxpayer customarily uses the property. The result is that the salvage value of such assets will more often be considerably in excess of nominal or junk value. With such increase in salvage value, the total amount which can be depreciated while the property is held by the taxpayer is substantially reduced, thus also reducing possible capital gains on the resale of the property. Furthermore, under the *Hertz* decision, when the double declining balance method of depreciation is used, the taxpayer cannot depreciate beyond the estimated salvage value of the asset.

In most cases the useful life of an asset is based on its entire economic life. Pursuant to the provisions of Internal Revenue Code Section 167, and the Regulations thereunder, such assets may be depreciated on a basis which takes their entire economic life into consideration. The problem arises when depreciable assets are acquired with an intent to dispose of them prior to the termination of their full economic life.

The aforementioned cases dealt with automobile rental dealers who depreciated the automobiles used in their business without any allowance for salvage value. The dealers computed depreciation on an economic life of four years. However, the usual periods which the dealers held the cars prior to selling them, were periods ranging from 15 to 24 months. The automobiles were readily market-

tax reminder

able at the time of disposal and the dealers realized substantial proceeds from the sale thereof. The dealers had made no allowance for salvage value and had depreciated the cars well below their disposal price. All of such depreciation had been previously deducted from ordinary income. Having reduced the basis by the substantial depreciation deductions, the dealers converted depreciation deductions into capital gains.

Although the cited cases involved automobile rental agencies, the Supreme Court's holdings are applicable to other taxpayers and will have a significant effect on depreciation in the future. In cases where depreciable business assets will be used for a shorter period than their full economic life, depreciation must now be calculated over the estimated useful life of the asset while used by the taxpayer. This involves an estimation of a salvage value that is more than the usual nominal or junk value, which some taxpayers have been utilizing in computing depreciation.

These cases hold Section 1.167(a)-(1) of the Regulations to be valid in interpreting the meaning of useful life and salvage value. They also hold that the Regulation applies retroactively to cases prior to its adoption on the basis that it is only an acknowledgment of previously existing law. The Court recognized that there is a risk of error in projecting the estimated period for which the property will be held in the business and the price that will be received for it on retirement, but the Court indicated that this should present no new problems to taxpayers since prediction is the very essence of depreciation accounting. Furthermore, the Court stated that if mistakes are made, adjustments may be made to insure that correct depreciation is taken.

Taxpayers who utilize such depreciable business property should reexamine their method of depreciation and the allowances made for salvage value in order to avoid unwelcome disallowances of depreciation deductions in future years.

LOS ANGELES COUNTY BAR ASSOCIATION

Committee on Oil and Gas Law

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Active Participator

It is to be supposed that with such emphasis being placed on the factor of the purchaser being a passive investor, with no control in the conduct of the enterprise, the courts have held the instrument not to be a security when the facts revealed that the purchaser did have a real share in the conduct of the enterprise.[15] Where, however, the transaction is one in which the assignee is merely an investor who for a consideration is given the right to share in the profits or proceeds of an enterprise to be conducted by others, the instrument representing such interest is a security.[16]

In both the Steele and the Syde cases promotion was involved, but not in the Hallmark case. In all three the court held the instrument not to be a security because the profit, if any, was to be derived from active participation in the enterprise by the purchaser. It seems clear that the sale and issue of landowner's royalties, overriding royalties, net profits interest and oil payments could generally be prohibited, without first obtaining a permit, because it is not contemplated that the purchaser will have any participation in the conduct of the enterprise. In the Hallmark case what amounted to a royalty or net profits interest was held not to be a security, because the person to whom it was issued was actively participating in the venture, the court merely stating that the assignment "created in Austin an interest in real property."

Mineral Deeds

If a landowner transfers all the oil and gas rights in his land by mineral deed, in the absence of special circumstances it would seem clear that no security has been issued, for the purchaser has complete control of all the mineral rights, and it is up to him to make a profit out of the mineral rights he has purchased. If the landowner executes mineral deeds conveying all the mineral rights in divided parcels of his land, provided each parcel is large enough to reasonably warrant development by itself, no permit would be required.[17]

In the light of the Supreme Court's language, it would also seem likely that no security would result from the execution of mineral deeds conveying an undivided interest in all the landowner's mineral rights, provided it was contemplated by the parties that the purchasers were to become tenants-in-common with the landowner in the right to go on the property to drill for and produce oil or gas. Such a case would be more difficult than the divided parcel case and might receive closer scrutiny by the court as to size and number of the undivided interests and any surrounding circumstances.

If, at the time the mineral deed is sold, the land is already under lease, the landowner is usually selling all or a part of his reserved landowner's royalty and all or a part of his reversionary rights in the minerals when the lease ends, in which case the purchaser usually contemplates the transaction as a passive investment, since he expects to reap a profit out of the activities of the lessee. If the mineral deed reserves the power to lease in the grantor, which it sometimes does,

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[15] *Austin v. Hallmark Oil Co.*, (1943) 21 C. 2d 718.

[16] *People v. Syde*, (1951) 37 C. 2d 765.

[17] *Moore v. Stella*, (1942) 52 C.A. 2d 725.

it would seem that the interest is a security, since the purchaser would be a passive investor.

Oil and Gas Leases

Ordinarily the assignment of an oil and gas lease would not be a security, since the only way the purchaser can reap a profit is by his own effort. If the lease is assigned as to a divided portion of the acreage, there would seem to be no issuance of a security. In the event the lessee executes and delivers assignments of a fractional undivided interest in the lease, a permit normally would be required unless the assignees were tenants in common of the right to drill and produce and were so intended to be.

Operating Agreements

Until recently operating agreements were not considered to be subject to the Corporate Securities Law, the purchaser often being placed in control of the operation and, therefore, would be the only one expected to reap a profit by virtue of his conducting the operations of the project. If, however, an operating agreement is entered into contemporaneously with the assignment of a fractional interest in an oil and gas lease, a permit would be required, since most such operating agreements provide that all control over operations remain in the hands of the seller, and the purchaser would again be relegated to the role of a passive investor. The courts and the Commissioner's office take the view that it is in effect a sale to the public, that the grantor is an issuer, the issuance of a security has resulted, and a permit is required.

Farmout Agreements

In the Midcontinent and Rocky Mountain Areas to a large extent and in California to a lesser extent, the

farmout agreement has become a popular means of exploring for oil by the independent operator and sophisticated investor. Large oil companies lease tracts of land and enter into agreements with independents, providing for the drilling of a free well by the independent operator. In the event production is obtained, the major oil company then agrees to assign parcels in a checkerboard pattern or an undivided interest in the lease play. In this situation where the independent operator drills a well in return for his assigned interest, it would seem that no security has been issued since any profit that may result from such activity is dependent upon the conduct of the enterprise by the independent operator. Whether or not a permit is required in these situations depends on whether any of the purchasers are passive investors, whether all purchasers will actively participate in the conduct of the enterprise, or if a sale has been made to the public.

Who Is an Issuer

The question of when a permit is necessary in connection with oil transactions arises when the transaction results in a sale of a security of the seller's own issue, or whether it is a sale of a security by the owner for his own account within one of the exemptions.[18] It has been established that an owner of securities validly issued cannot be prevented from selling them for his own account, either in a group or in successive transactions.[19]

If the owner of a royalty for which a permit has been granted imposing no conditions sells it for his own account, and he is not the issuer, the sale is exempted. However, if he sells a portion of it, a permit is required.[20]

Suppose a royalty is purchased in a bona fide transaction in a foreign state where no permit is required? Suppose the owner then sells for his own account in California. It would seem that no permit would be required. But if portions of the royalty are to be sold in California, it might be held to be a new issue.

Effect of Failure to Obtain Permit

We have already pointed out that in interpreting the Corporate Securities Law the courts will not go beyond the case at hand, will not give an inclusive or exclusive definition of the term "security," and will disregard form and look at substance. What, then, are the consequences of failure to obtain a permit and the relative disadvantages of applying for a permit against the risks taken if one is not obtained. Sections 26103 and 26104 of the Corporations Code make it a serious crime, both on the part of the issuing company, and on the part of officers, agents or employees knowingly assisting, to violate the act. Section 26100 also makes every security sold or issued without a permit void. Since the prohibition is on the seller, the courts have held such an issue to be void unless the purchaser elects to treat the transaction as valid, provided the purchaser is not in pari delicto, in which event the law leaves the parties where it finds them, giving redress to neither party. This in effect gives the purchaser an option to bring a civil action for his money back, to which the seller has little or no defense.[21]

[18] See Section 25152, Corporations Code. Also see *People v. Pace*, (1925) 73 C.A. 548.
[19] *People v. Lesser*, (1932) 123 C.A. 489.
[20] *Mary Pickford Co. v. Bayly Bros. Inc.*, (1939) 12 C. 2d 501.
[21] *Eberhard v. Pacific Southwest L. & M. Co.*, (1932) 215 C. 226. *Western Oil, etc. Co. v. Venage Oil Corp.*, (1933) 218 C. 733. *Domestic & Foreign Petroleum Co. v. Long*, (1935) 4 C.2d 547.

If a permit is not obtained where one is required, the purchaser can ride along with the venture and see how it turns out. If it is unsuccessful, he can sue for recovery of his investment upon the ground that the security is void for failure to obtain a permit.[22] The court may have arrived at this decision because the Corporate Securities Act, as it then read, didn't apply to individual issuers.

If the factual situation is borderline, in order to avoid the possibility of criminal and civil litigation, with its attendant expense, the conservative thing to do is to advise your client to apply for a permit.

Are Partnerships Excepted

If two or more persons form a general partnership to engage in the oil business there should be no more problem with the Corporate Securities Law. It has been argued that bona fide general partnership interests and limited partnership interests are not securities within the meaning of the Corporate Securities Law, primarily upon the ground that the requirement of unanimous approval of membership and consequent lack of free assignability of the interests prevents any effective use of true partnerships as a means of raising capital from the investing public. Such interests are now exempt if the requirements of Section 25100 (1) are met. Those requirements are that, in the case of limited partnerships, certificates be executed, filed and recorded as provided by Sections 15502 and 15525 of the Corporations Code, and that, in both general and limited partnerships, the in-

[22]*Buttrick v. Seines,* (1930) 209 C.567. The court said:
"Assuming that the original royalty deed was a 'security,' there was no violation of the Corporate Securities Act—when the defendant Hamilton, as sole owner of the two original leases, thus transferred to the plaintiff the one seventy-second interest therein. (*People v. Pace,* 73 Cal. App. 548 (283 Pac. 1089))."

terests not be offered to the public.

In the case of a limited partnership a different situation may exist. Limited partnerships offer investors an opportunity to participate in the oil exploration business in a way that has continuity, yet limits the investor's liability to the initial capital invested, and the limited partners have no control over the conduct of operations, such control being in the general partner. In determining whether or not a permit is necessary it is important to determine if the partnership interests are being "offered to the public."[23]

In a true general partnership, all partners have control over the conduct of operations. But, in a limited partnership, the limited partner is a passive investor. If there is any doubt about the limited partnership interests being "offered to the public," the only safe answer is to obtain a permit.

Joint Venture Exception

The joint venture interest exemption is in subsection (m) of Section 25100. It is the same as the partnership exemption except that it uses the words "bona fide."[24] It has been held that even where there is a sharing of profits the conclusion does not follow that there is a joint venture relationship when there is no joint participation in the management and control of the business, which is an essential element of a partnership.[25]

Since the courts look through form to substance, it would seem that any oil transaction which was termed a "joint venture," but which in fact placed all control over the conduct of the enterprise in the hands of the promoter, leaving the investors to rely on the conduct of the venture by the promoter for realization of any profit from their investment, would be of doubtful validity, and if it were in fact a bona fide "joint venture," it would be exempt only if no interests were offered to the public.

Acts In or Out of the State

The California Corporate Securities Law purports to prohibit all proceedings taking place in this state leading to the issuance of a security unless a permit is obtained. It also purports to invalidate any security sold or issued without a permit then in effect authorizing the issuance or sale.

Problems are constantly arising where all or parts of a transaction take place in California, but the actual issuance of the security takes place outside the state. California can attach criminal penalties to preliminary acts in California even though actual issue of the security takes place outside the state, and could declare such acts in California to be illegal.[26] But, if the security is actually issued outside California, is it nevertheless void by California law, since the California law can have no extra territorial effect?

When an oil royalty in land in Texas is sold in California without a permit, does it give the law of California extraterritorial effect to declare that the security representing an interest in land in Texas is void? The Cali-

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[23] *In Re Leach,* (1932) 215 C. 536. *Mary Pickford Co. v. Bayly Bros., Inc.,* (1939) 12 C. 2d 501.

[24] *Grant v. Weatherholt,* (1954) 123 C.A. 2d 34.

A joint venture is generally considered to be in the nature of a partnership for the carrying out of one specific enterprise, while a partnership on the other hand, generally possesses continuity.

[25] *Spier v. Lang,* (1935) 4 C. 2d 711.

[26] *Leven v. Legarra,* (1951) 103 C. A. 2d 319. Shares of stock of a Nevada corporation were executed at its Los Angeles office, mailed to Nevada with instructions to the Nevada office to remail the shares to the purchaser in California, and were declared void upon suit of the purchaser.

[27] See *Robbins v. Pacific Eastern Corp.,* (1937) 8 C. 2d 241, holding that preliminary negotiations in California leading to an exchange of shares between stockholders was illegal, but the exchange actually caried out in New York was valid because the contract was complete within itself in New York and thus was the re-execution and carrying out of a contract complete within itself in a state where it was legal.

fornia law is not interfering with Texas titles, but is only declaring that a transaction involving Texas land, which took place in California, is void.

Legal Avoidance

Sometimes the transaction can be so managed as to avoid the necessity for a permit where one otherwise might be required. For example, where the owner of a lease assigns the entire lease, no permit is required. However, if in connection with the assignment, an overriding royalty is given back by the assignee, a permit would have to be obtained for the assignment of that royalty. But, if the assignor, in making the assignment, reserves his overriding royalty no permit is required because he is merely holding back something from his conveyance. The royalty is not being issued, nor sold.

Of course one must watch for consequences which may be undesirable in other respects. The reservation of an overriding royalty has been held to make the transaction a sublease rather than an assignment, and a quitclaim from the assignee to the landowner without the joinder of the royalty holder may leave an interest unreleased of record which will cause trouble in future title reports.

In the same way, if several persons plan on acquiring a lease, either by assignment, or from the landowner, it may avoid a problem to have them all receive the lease or assignment together, rather than have it run to one and have him assign out interests to the others. If the latter is done, the problem of whether or not a permit is required is immediately present. The probabilities would seem to be that a permit is not required because the parties have all joined in a venture to acquire the lease, title being taken in the name of one as trustee. *Austin v. Hallmark Oil Co., supra,* indicates that under such circumstances no permit would be required. And, of course, as has been heretofore pointed out, if all parties are conducting the enterprise and none are passive investors, no permit would seem necessary for that reason. But the point is, if the parties take title jointly to begin with, there is no problem to resolve.

In the ordinary oil transactions among businessmen familiar with the oil business, a great amount of labor and time may often be saved by simply having the purchaser make a showing of his familiarity with the oil business and its attendant risks and that he has made his own independent investigation of geology, title, etc., and further consenting to the escrowing of the security so that it may not be transferred without consent of the Commissioner. In that way the necessity of showing the title information, engineering report and budget can often be avoided. Because of the speed with which wells sometimes go down while the paper work is being completed, avoiding the delay of a full-fledged permit application is oftentimes a necessity. The escrow condition causes no real trouble and if the the well is dry, as it usually is, the chances are that everything will be quitclaimed anyway.

The lawyer's approach to the problem of application of the Corporate Securities Law to oil transactions should be different if he is faced with an existing problem where the absence of a permit cannot be cured, if one was required, from his approach if he is called upon to advise as to whether or not a permit should be obtained. As heretofore shown, a permit is cheap insurance for the avoidance of a lot of problems which don't have definitive answers. On the other hand, if the lawyer is not practicing

preventive law, an analysis of the purchaser's position in the transaction in the light of the language of the cases as to whether or not the purchaser is a passive investor or an active participant in the conduct of the enterprise may afford good grounds for determining whether to settle or to litigate to the bitter end.

Federal Securities Act

With varied types of exploration programs being carried on in a number of states, the practicing oil and gas attorney is not only faced with the Securities Acts of the various states involved, but is also faced with the Federal Security regulations with respect to their application to the sale of an oil and gas security. In this connection, the Securities Act of 1933 and the various changes, Commission's general counsel's opinions and the like all must be taken into consideration in guiding a client through the maze of red tape that now exists.

Although most of us realize that private offerings are not subject to the Federal Securities Act, there is a great deal of confusion as to what constitutes a private offering.[28]

Conclusion

During the last ten years a number of states which theretofore did not have blue sky laws have passed security acts similar to those in California, a few of the states exempting oil and gas transactions.

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[28] *SEC v. C.M. Joiner Leasing Corporation*, (1943) 320 U.S. 344. See Volume 2, No. 1, *Practice Commentator*, May 1960. *SEC v. W. J. Howey & Co.*, (1946) 328 U.S. 293.

The Supreme Court defined an investment contract as an investment of money in a common enterprise with the expectation that the investor would earn a profit solely through the efforts of the promoter or of someone other than himself.

SEC v. Crude Oil Corp., (1937) 93 Fed. 2d 844.

The court in that case held that while ordinarily the sale of oil does not involve the sale of a security, the purported sale of oil under the facts of this case involved the sale of an investment contract.

In order to avoid the necessity of multiple registrations with the federal government and the various states in which the sales of stock or oil transactions are being conducted, a uniform Securities Act has been drafted in the hope that it might be adopted by several states. This would eliminate what is now a very expensive and time-consuming process, and may be of considerable help in guiding the oil and gas attorney in advising his client.

A step in this direction has recently been taken in the State of California in that a proposed Uniform Securities Act for the State of California setting forth registration requirements similar to those provided in the Federal law and other uniform laws was introduced in the 1959 Session of the California Legislature as Assembly Bill 2531. While that bill failed to pass, it was referred to an Interim Committee, the Assembly Committee on Judiciary-Civil, for report to the 1961 Session of the Legislature as to the advisability of such legislation. The Interim Committee held hearings in San Francisco in December, 1959, and in Los Angeles in January, 1960. At the conclusion of these hearings the Interim Committee appointed an Advisory Committee consisting of members of the Bar of Los Angeles and San Francisco, to study A. B. 2531 and make its recommendations to the Interim Committee.

Concurrently with the mentioned developments regarding a Uniform Securities Act for California, the Committee on Oil and Gas Law of the Los Angeles County Bar Association has been giving careful consideration to appropriate amendments of either the existing Corporate Securities Law or the proposed Uniform Securities Act, A. B. 2531, to provide reasonable exemptions of oil and gas interests from securities act regulation[29] by exempting either (1) limited public offerings of oil and gas interests or (2) transactions involving so-called "sophisticated investors." Under such proposed amendments an oil and gas interest would be exempt from registration and the filing of a prospectus if not offered to the public, and if offered to ten or less persons it would not be deemed offered to the public, or if the only parties to the transaction involving the oil and gas interest are sophisticated investors.

Since the regulatory authorities have expressed some strong, but possibly not justified, opposition to the limited public offering exemption, the Committee on Oil and Gas Law has reviewed its position and is currently recommending to the Advisory Committee only a proposal for exempting transactions as to oil and gas interests where the only parties involved are esoteric persons such as geologists, engineers, oil companies, landowners, and those licensed as oil and gas brokers, or by the Commissioner of Corporations. It is believed that such an exemption would be reasonable and would facilitate the consummation of oil and gas transactions with no real risk of imposition upon the public. The exempted transactions would not involve public offerings, would affect only those parties who are experienced in oil and gas matters and consequently would not be inimical to the public interest. At the same time, they would greatly relieve the

[29]Shortly prior to the introduction of A.B. 2531 the Committee on Oil and Gas Law approved the amendment of Section 25100 (m) of the Corporations Code to read as follows:

"(m) Any bona fida joint adventure interest, *or interest in oil or gas rights, title or leases,* except such interests when offered to the public. *No offering to ten or less persons shall constitute a public offering.*"

(Underscoring indicates amendatory language.)

This would provide a limited public offering exemption with respect to oil and gas interests but was not pressed to a conclusion because of the introduction of A.B. 2531.

burdens existing under the present law's permit system which would continue virtually unabated under the proposed act's registration system. Such requirements are costly and time-consuming and serve no useful purpose in regulating legitimate mineral interest transactions in which neither a public offering nor the public welfare is involved.

If we are to continue to develop our natural resources, large expenditures of capital are going to be necessary, a portion of which must be venture capital from the private investor. Therefore, it seems imperative that the various bar associations on both the local and federal level should combine their efforts in working out a uniform Securities Act whereby the raising of this venture capital may be carried out in a legal, organized and practical way, thereby assisting the oil and gas attorney to guide his client along the path of compliance with confidence.

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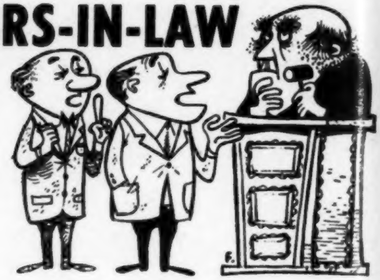

By

GEORGE HARNAGEL, JR.

FIRM FUN (III)

Richard Barry, Industrial Accident Commission Referee, took up the project of forming fanciful law firms from lawyers listed in Parker's Directory of Attorneys where this Department left off.[1] He reports that "a fascinating evening with Parker's" disclosed the following possibilities:

In the admiralty field: SAILORS, CRUISE, CUTTER & TARR. "Also with a good harbor practice" would be: SALMON, MARLIN, FISHMAN & PIKE.

"Back in town, competing for the classy trade," we could have: RICH, WELLBORN, GENTRY & IVEY.

"While down on Main Street" you might find: GALLON, CORN, BENDER & FRIED.

"Out in Suburbia" [where else?] would be: HOME, SWEET, HOLMES & COZY.

"There might be the well balanced firms" of GAY & MOODY and of HIGH, UPP, DEEPER & DOWNEY.

"A solid ecclesiastical practice" would go to LORD, POPE, PRIEST, CHURCH & FAITH.

He seems to feel that GOOD, HEAD, FINE, GUY & JEWELL might have a psychological advantage over both RUNNER, RINGER, DICKER & FOX and GALL, FLATTERY, FAVOR & BULL; and that STRONG, STURDY, HALE & HARDY could outlast TYRE, SLEEPER & DROOZ.

And finally he suggests that WAY, FARR, OTT & JIVERY could be expected to specialize in juvenile matters.

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Phun in Philadelphia

"Trivia," a regular department of *The Shingle* of the **Philadelphia** Bar Association, belies the canard that the Philadelphia lawyer devotes his time exclusively to the serious business of weaving or unraveling inscrutable legal documents. It's free-wheeling editor doesn't hesitate to publish a photograph of a prominent member of the local bar adorned in a leopard skin and to accompany it with the statement that: "The pornographic picture of the hairy, semi-nude which appears in the next column is that of Joseph G. (Whiplash) Feldman, President of the Plaintiff's Trial Lawyers Assn. about to enter a 'Mr. America' contest on the *S.S. Constitution.*" Most of its items relate to odd or unusual experiences or activities of the local bench and bar, which probably seem a lot funnier if you know the people involved, but now and then it roams beyond the local scene. For example, it recently cited a Philadelphia punster as suggesting that "the Dr. Finch homicide trial" could involve "*premedicated* murder."

[1]The Los Angeles Bar Bulletin Vol. 35, No. 6, p. 203, April, 1960; see also Vol. 35, No. 8, p. 271, June, 1960.

Diminishing Returns of the Law Or The Truth About Texas

From the classified advertising columns of *Texas Bar Journal* we quote:

"Experienced attorney wants placement . . . now County Judge of small depopulating county. . . .

"33-year-old lawyer with wife and two children desires to relocate on account of decreasing population in area. . . ."

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Integrated bars came into existence because of the widespread feeling that state voluntary associations were incapable of doing an efficient job. Now there is a decided trend in the direction of setting up some type of a statewide voluntary organization to supplement and assist the law-imposed, involuntary association. For example, statewide organizations consisting of officers or representatives of local and district bar associations have been set up recently in **Texas** and **Missouri.** In each instance one of the principal reasons cited as justifying the creation of the new state organization was the need for greater communication and cooperation between the local associations and the state bar.

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Shotgun Technique

"We observe that defendant alleges 52 separate grounds of error, most of which are irksomely repetitious. While this scatter-gun approach may possess a certain primitive effectiveness when a man seeks to persuade another to marry his daughter, it scarcely persuades this Court."—*Taylor v. Milton* (1958), 353 Mich. 421, 92 NW2d 57, at page 59, per Mr. Justice Voelker.

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The **Wisconsin** Bar Association prepares placards headed, in bold-face type: **"WE DO NOT PRACTICE LAW."** These are distributed by local bar associations to public officials, notaries, justices of the peace, banks and others. The placards read in part as follows: "For the protection of the public and the individual who has problems of a legal nature, the practice of law has been limited by State Law to duly licensed attorneys who are specially trained in their profession. . . . In the public interest we refrain from giving legal advice. We do not prepare or assist in the preparation for others of Contracts, Deeds, Mortgages . . . or other legal instruments. . . . Posted in cooperation with The Wisconsin Bar Association."

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The San Francisco Scene

The No. 1 man in the San Francisco Civil Service Department is Mr. Grubb. The No. 2 man is Mr. Wurm.

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A Very Dry Title

Hocking v. Title Insurance and Trust Company (1951), 37 Cal.2d 644, 234 P.2d 625, is the subject of an article in *Res Gestae,* publication of The Indianapolis Bar Association. It carries the heading: "Subdivision Control in the Desert, or a Very Dry Title," and invites the reader to

"Consider the sad case of Dorothy Hocking who paid $14,550 for two lots in a new addition at Palm Springs, California. The city council had approved the plat, but without compliance with its own ordinance requiring agreements and bonds for streets and other improvements. The recorder recorded the plat in reliance on the council's approval. The streets and other improvements were never provided. Now the same city refused to issue a building permit because of failure to comply with the requirements of the ordinance as conditions to approval of

the plat. Mrs. Hocking is left with two small pieces of barren desert worth approximately nothing.

"The California Supreme Court said, . . . :

"'Although it is unfortunate that plaintiff has been unable to use her lots for the building purposes she contemplated, it is our view that the facts which she pleads do not affect the marketability of her *title* to the land, but merely impair the market *value* of the property.'"

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Professional Diplomacy

The Bergen County (N.J.) Prosecutor's Digest reminds us of another hardy and amusing perennial:

The old experienced barrister, wise in his profession, was well aware that the judge hearing the case was noted for his bad temper and general testiness; but his junior was not so well informed.

Outraged by a decision from the judge, the young man shot to feet. "Your Honor," he said h edly, "I am *amazed* that you sho make such a decision!"

There was a shocked silence. T old barrister, determined to retri the situation, rose also.

"Your Honor," he said, "my petuous young friend intend disrespect. He has much to le I can assure him that when he g my amount of experience he never be amazed at *any* de sion Your Honor makes."—Ber County (NJ) Prosecutor's Di

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Busy Man

The man who is so busy that does not have time to attend meet of his bar association is like the who is so busy chopping wood he doesn't have the time to shar his ax.—*Texas Bar Journal.*